

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ROBERT CHARLES BANCROFT,)	
)	
Petitioner,)	
)	
v.)	Civil No. 99-0017-B
)	
MAINE WARDEN OF CORRECTIONS,)	
)	
Respondent)	

RECOMMENDED DECISION

Petitioner has filed a second Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. section 2254.¹ Respondent objects to the Petition for the reason that it is barred by the one statute of limitations set forth in 28 U.S.C. section 2244(d). The Court agrees.

Petitioner's application for post-conviction review was pending at the time the Antiterrorism and Effective Death Penalty Act ["AEDPA"] became effective. The matter was not finally concluded until Petitioner failed to timely appeal the trial court's denial of post-conviction relief on April 3, 1997.² This Court has repeatedly

¹ The first Petition (No. 98-0159-B) was dismissed for procedural reasons, and was not addressed on the merits. Accordingly, this Petition is not subject to the requirements of 28 U.S.C. section 2244.

² Petitioner's application was denied by the trial court on March 12, 1997. Petitioner had twenty days in which to file an appeal. Me. R. Crim. P. 76(c).

begun tolling the one-year grace period this, and many courts, afford petitioners before applying the AEDPA's one year time limit, only after completion of pending post-conviction review petitions. *Pottios v. Merrill*, Civ. No. 98-0188-B (Rec. Dec., Nov. 25, 1998, *aff'd* Dec. 15, 1998); *Leone v. Merrill*, Civ. No. 98-0038-B (Rec. Dec., May 21, 1998, *aff'd* June 25, 1998). Accordingly, the grace period in Petitioner's case expired on April 3, 1998. Petitioner's first Petition for Writ of Habeas Corpus was filed with the Court on July 3, 1998, and this second Petition was filed on January 22, 1999. Petitioner is barred by the time limitations of the AEDPA from seeking habeas relief from this conviction.

Conclusion

Accordingly, I hereby recommend the Petition for Writ of Habeas Corpus be DISMISSED and the Writ DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.